

## **REMARKS/ARGUMENTS**

### **Status**

Claims 1, 2, and 4-32 were noted in the Office Action as previously pending, with claims 1, 2, 31 and 32 rejected, and claims 4-8 objected to. Specifically, claims 1 and 31 were rejected under 35 U.S.C. § 112 for failing to particularly pointing out and claiming the subject matter. The claims were rejected for reciting “assignment” without sufficient antecedent basis, and a question was raised regarding how a comparison can be done during a reference period with respect to certain limitations.

Further, claims 1, 2, 31 and 32 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent 5,970,481 (“Westerlage”).

### **Amendments Made in Response to 35 U.S.C. 112 Rejections**

Claims 1 and 31 have been amended to correct the antecedent basis for the limitation “assignment.” The amendment creates a step of “assigning” and the reference to “assignment” has been replaced to refer to “assigning.” A similar amendment has been made to recite “classifying” instead of “classification.”

In addition, Applicant has amended claim 1 to recite “said plurality of unassigned cells” to maintain corresponding antecedent basis of the limitation. Applicant has also amended claim 31 to recite in the preamble “a service territory having unassigned cells” so as to provide proper antecedent basis for “said unassigned cells” recited subsequently.

A further amendment is made in response to the rejection regarding “how the comparison can be done during a reference period,” so that the claims 1 and 31 now recite “a comparison between a number of stops in said grid segment by said driver during said reference period and a total number of stops by said ~~staff of drivers~~ driver during said reference period.” Applicant submits that any confusion regarding how the comparison is removed, and further illustrations pertaining to this processing can be found in the specification, pages 32-35.

### **Response to 35 U.S.C. 102 Rejections**

Claims 1, 2, 31, and 32 are rejected as being anticipated by U.S. 5,970,481 (“Westerlage”). Before addressing the allegations in the Office Action, a brief review of the disclosure of Westerlage is appropriate.

Westerlage is directed to “[a]n apparatus for determining a tax for a vehicle [that] includes a positioning device operable to determine a plurality of vehicle positions along a route traveled by the vehicle.” (Abstract.) At a high level, the system monitors the location of a vehicle as it passes through various taxing jurisdictions, and computes a tax appropriate for that particular vehicle. This is accomplished using a “processor [that] determines the distance traveled by the vehicle in the regions in response to the vehicle positions and the geographic information.” (Col. 1, lines 61-63.)

Notably, Westerlage monitors a traveling vehicle, and does not direct, advise, or control which route is taken by the vehicle. As such, it computes a tax bill for travel that has occurred. Fundamentally, Westerlage tracks the route traveled to compute a tax, and does not direct a particular route to be taken.

The Office Action alleges that “Westerlage et al. teaches a system/method of optimizing a route plan having a plurality of routes with a service territory comprising... .” (Page 3.) Applicant respectfully disagrees, as Westerlage merely monitors the travel route taken by the vehicle, and does not disclose “optimizing a route plan.” Further, the reference in the Office Action to Figure 2 of Westerlage as anticipating the claim is incorrect, as Figure 2 only shows “a grid overlaying a map” (col. 2, line 35). There is no disclosure of the figure representing optimization of a route to be selected, but rather a grid pertaining to a route that has been traveled. As stated in Westerlage, Figure 2 represents “[the] positions are, actual location over which vehicle 20 has traveled.” (Col. 9, lines 18-20.)

The Office Action alleges that Westerlage discloses “identifying from among a staff of drivers a most frequent driver for the grid segment based upon a grid segment visiting frequency...” (page 3) and cites (“figure 1, dispatch 30 monitors the position of vehicle 20 in

specified region via the information received from the mobile unit 22 of the vehicle 20).” While Westerlage discloses monitoring the position of a vehicle, there is no disclosure that the driver (versus a vehicle) is monitored to ascertain how frequent the driver frequents a grid segment. This is consistent with the purpose of Westerlage, as it computes a tax of the path of a vehicle, not a tax based on the person driving the vehicle. Further, the tax is for the route taken, not based on how many times in the past the truck has taken the route. The Office Action has not identified specifically where this claim limitation is disclosed in the prior reference, and Applicant submits that this is not inherent with the purpose of Westerlage.

The Office Action alleges that Westerlage discloses “classifying said subset of said unassigned cells associated with said grid segment as a core cell and assigning each said core cell to said identified most frequent driver...” and cites column 10, lines 37-49 of Westerlage. Applicant notes that the cited text merely states:

Region grid 60 disclosed in FIG. 2 comprises a plurality of cells. Each cell is associated with the taxing region (either region 1, 2 or 3) within which it is located. All cells are approximately equal in size. Preferably, a cell would be located wholly in one region or another. In some cases, however, such as when the boundaries between regions are not straight lines, a cell may be partially located in a plurality of regions. In this latter case, the cell may be associated with the region in which most of the cell is located. Software may be used to fill in the data associated with each cell of region grid 60. This data may include the region associated with the cell, geographical coordinates defining the cell, or routes traveling over the area represented by the cell.

The cited text does not disclose “core cells” and “assigning each said core cell to said identified most frequency driver.” The cited text merely pertains to cells in a taxing region, for purposes of computing the tax associated with the route taken by a vehicle.

Applicant submits that Westerlage does not anticipate the claim limitations of independent claims 1 and 31. Specifically, the limitation of claim 1 of “assigning each said core cell to said identified most frequent driver” is not taught or suggested by Westelage. Nor is the limitation of claim 31 of “calculating an average grid segment visit frequency for said reference period” disclosed by Westerlage. Because Westerlage merely monitors the location along a route for purposes of computing a tax, it would not perform the steps associated with route

optimization. Further, even if Westerlage did optimize the route for tax purposes, this would not pertain to or anticipate the present claims.

Without all the claim limitations disclosed by the prior art reference, the prior art reference cannot anticipate the claims as alleged. In the present case, Applicant submits the independent claims 1 and 31 are patentable over Westerlage, and therefore no amendments to overcome the reference are made. Further, because the dependent claims 2, 4-8, and 32 each depend from an independent claim patentable over Westerlage, the dependent claims are also patentable over Westerlage. Further, applicant has not conceded the dependent claims are anticipated by Westerlage, but that because the dependent claims depend from a patently distinct claim and incorporate the limitations of the respective patently distinct claim, the dependent claims are patentable as well.

#### CONCLUSION

Applicant has amended the claims to address the rejections based on 35 U.S.C. § 112. Applicant has not amended the claims in light of Westerlage, but has shown that the portions of Westerlage alleged to disclose the limitations of independent claims 1 and 31 do not, in fact, disclose the alleged claim limitations. Further, Applicant has cancelled claims 3 and 9-30 in an effort to draw the present prosecution to a close and submits that all pending claims (claims 1, 2, 4-8, 31 and 32) are now in a condition for allowance.

Appl. No.: 10/647,062  
Amdt. dated July 3, 2007  
Reply to Office Action of May 15, 2007

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON July 3, 2007.